

ORDINANCE NO. O2023-009

AN ORDINANCE of the City Council of the City of Tumwater, Washington, repealing Tumwater Municipal Code Chapter 5.07 (Ordinance O2016-004) relating to Transportation Network Company Services.

WHEREAS, the City Council approved Ordinance O2016-004 on June 7, 2016 to provide for and promote the safety and welfare of the general public with respect to the regulation of Transportation Network Company Services operating within the City of Tumwater; and

WHEREAS, Transportation Network Companies are companies like Uber or Lyft that use computer or mobile-phone-based applications to connect passengers and drivers for the purpose of providing prearranged rides; and

WHEREAS, on March 31, 2022, Governor Jay Inslee signed into law Engrossed Substitute House Bill (ESHB) 2076 to establish comprehensive state-wide regulations for Transportation Network Companies and drivers operating in Washington; and

WHEREAS, with certain exceptions not applicable to the City of Tumwater, ESHB 2076 expressly preempts the field of regulating Transportation Network Companies and drivers in Washington and provides that no local government may regulate Transportation Network Companies or drivers or impose any tax, fee, or charge that applies explicitly or exclusively to Transportation Network Companies or drivers; and

WHEREAS, the City must therefore repeal TMC 5.07 because its regulation of Transportation Network Companies and drivers is specifically preempted and prohibited by ESHB 2076.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Repealer. Chapter 5.07 of the Tumwater Municipal Code, Transportation Network Company Services, is hereby repealed in its entirety.

~~Chapter 5.07~~ ~~TRANSPORTATION NETWORK COMPANY SERVICES~~

~~Sections:~~

~~5.07.010 Purpose.~~

~~5.07.020 Definitions.~~

~~5.07.030 Turnwater business license required.~~

~~5.07.040 TNC license required.~~

~~5.07.050 TNC driver requirements.~~

~~5.07.060 TNC requirements.~~

~~5.07.070 Vehicle inspection and maintenance.~~

~~5.07.080 Insurance requirements.~~

~~5.07.090 Registered agent required.~~

~~5.07.100 Audit.~~

~~5.07.110 Operational requirements.~~

~~5.07.120 Nondiscrimination Accessibility.~~

~~5.07.130 Revocation, suspension, or denial of TNC license.~~

~~5.07.140 Enforcement.~~

~~5.07.150 Delegation and reciprocity.~~

~~5.07.160 Penalty.~~

~~5.07.010 Purpose.~~

~~The purpose of this chapter is to provide for and promote the safety and welfare of the general public and not to create or designate any particular class of persons who will or should be specially protected by its terms. Nothing contained in this chapter is intended, nor shall be construed, to create any liability on the part of the city or its employees for any injury or damage resulting from the failure of the licensee to comply with the provisions of this chapter, or by the city's or its employees' enforcement or failure to enforce any part of this chapter.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.020 Definitions.~~

~~For the purpose of this chapter, the following definitions apply:~~

~~A. “Digital network” means an Internet-enabled platform or application used to connect passengers with TNC drivers.~~

~~B. “Director” means the director of the city of Tumwater’s finance department.~~

~~C. “Operate a TNC in the city of Tumwater” means a TNC uses its digital network to connect a TNC driver to a passenger for a trip originating in the city of Tumwater.~~

~~D. “Operate as a TNC driver in the city of Tumwater” means a TNC driver accepts a trip request over a TNC’s digital network that originates in the city of Tumwater.~~

~~E. “Person” means any natural person of either sex, firms, corporations, partnerships and associations either acting by themselves or by servant, agent or employee. The singular shall include the plural and the masculine pronoun shall include the feminine and neuter.~~

~~F. “TNC driver” means an individual who uses a personal vehicle to provide transportation services arranged through a TNC’s digital network.~~

~~G. “TNC vehicle” means a personal vehicle used by a TNC driver to provide transportation services arranged through a TNC’s digital network.~~

~~H. “Transportation network company” or “TNC” means an entity that uses a digital network to connect passengers to TNC drivers who use personal vehicles to transport passengers for compensation between geographical points chosen by the passenger.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.030 Tumwater business license required.~~

~~A. It is a violation of this chapter for any TNC to operate in the city of Tumwater without a current and valid city of Tumwater business license.~~

~~B. It is a violation of this chapter for any driver, who is an independent contractor affiliated with a TNC, to operate as a TNC driver in the city of Tumwater without a~~

~~current and valid city of Tumwater business license. It is the responsibility of the TNC to communicate this requirement to TNC drivers.~~

~~C. TNC drivers must keep a copy of their business license in their vehicle when logged on and accepting rides from the TNC's digital network. It is the responsibility of the TNC to communicate this requirement to TNC drivers.~~

~~D. Except as described in subsections B and C of this section, the TNC shall have no obligations as to TNC driver business license requirements.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.040 TNC license required.~~

~~A. It is a violation of this chapter for any TNC to operate in the city of Tumwater without a current and valid city of Tumwater TNC license except as provided in TMC 5.07.150(B).~~

~~B. The director or designee may issue a TNC license; provided, that the TNC applicant submits an affidavit sworn under penalty of perjury, on a form provided by the city, that to the best of the applicant's knowledge, formed after a diligent inquiry into the facts, the TNC is in full compliance with this chapter, including, but not limited to, all driver, vehicle, insurance, and operational requirements.~~

~~C. The TNC license shall be effective for one year.~~

~~D. The annual TNC license fee shall be \$1,000 and shall be paid in full at the time of submitting all initial and renewal applications.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.050 TNC driver requirements.~~

~~A. TNC drivers shall certify that they have no known physical or mental infirmity which jeopardizes the ability to safely operate as a TNC driver transporting the public.~~

~~B. TNC drivers shall be at least twenty-one years of age.~~

~~C. TNC drivers shall possess a valid Washington State driver's license and shall have been continuously licensed as a driver by the state of Washington and/or another state for at least one year immediately prior to operating as a TNC driver in Tumwater. A home state driver's license with active military ID or student ID~~

~~with proof of full-time enrollment and nonresident status may be an acceptable alternative, subject to review and approval.~~

~~D. TNC drivers shall certify that they have insurance that meets the minimum liability requirements for the state of Washington, including insurance coverage for use of the vehicle for transportation of passengers for hire as required by Chapter 48.177 RCW as enacted or subsequently amended.~~

~~E. TNC drivers shall not have been convicted or found to have committed three or more moving violations during any twelve-month period during the three years prior to operating as a TNC driver in Tumwater.~~

~~F. TNC drivers shall possess proof of motor vehicle registration and proof of current automobile liability insurance. The TNC shall certify that all drivers have insurance that meets the requirements of this chapter, including insurance coverage for use of the vehicle for transportation of passengers for hire as required by Chapter 48.177 RCW as enacted or subsequently amended.~~

(Ord. O2016-004, Added, 06/07/2016)

~~5.07.060 TNC requirements.~~

~~A. The TNC or its agent shall maintain accurate and up-to-date records for all TNC drivers accessing its digital network to provide TNC services in the city of Tumwater. Said records shall include the driver's name, age, address, social security number, criminal history, driver's license, motor vehicle registration, vehicle safety inspection records, and proof of at least the minimum automobile liability insurance coverage required by the state of Washington, including insurance for use of the vehicle for transportation of passengers for hire as required by Chapter 48.177 RCW as enacted or subsequently amended.~~

~~B. Prior to permitting a person to act as a TNC driver on its digital network, and annually thereafter, the TNC shall obtain and review a criminal background check report for such person. The criminal background check shall include a search of no less than five years of database history, unless prohibited by law, in which case the duration of the search shall be the maximum number of years permitted by law. The criminal background check shall include local, state, and national criminal history databases and national and state sex offender registries. Any person who is on a sex offender registry or who has a criminal conviction, within the past five years, of crimes involving driving under the influence of alcohol or controlled substances, felony fraud, sexual offenses, felony property damage or theft, acts of violence, acts of terror, reckless driving or negligent driving, or use of a motor vehicle to commit a felony, shall not be permitted to act as a TNC driver on the~~

~~TNC's digital network. The TNC or its agents shall maintain records of such criminal background checks for a period of two years. For purposes of this section, the term "criminal conviction" includes a "conviction or other disposition adverse to the subject" as defined under RCW 10.97.030, and bail forfeitures.~~

~~C.—The TNC shall only permit an individual to act as a TNC driver on its digital network if it finds that the standards set forth in this section are met by such individual. The TNC shall revoke a driver's authority to act as a TNC driver on its digital network if the standards set forth in this section are not met.~~

~~(Ord. O2016 004, Added, 06/07/2016)~~

~~5.07.070 Vehicle inspection and maintenance.~~

~~A.—TNC vehicles operating in the city of Tumwater shall be no more than ten years old.~~

~~B.—The TNC shall inspect or cause to be inspected annually and every year thereafter, every motor vehicle used by a TNC driver before allowing the driver to use the motor vehicle to provide transportation services.~~

~~C.—The inspection required in subsection B of this section must include, without limitation, an inspection of the foot and emergency brakes, steering, windshield, rear window, other glass, windshield wipers, headlights, tail lights, turn indicator lights, braking lights, front seat adjustment mechanism, doors, horn, speedometer, bumpers, steering system, muffler, exhaust, tires, rear view mirrors, and safety belts. The inspection must ensure that all of the components listed are in proper functioning order.~~

~~D.—The TNC shall maintain vehicle safety inspection records for a minimum of three years.~~

~~(Ord. O2016 004, Added, 06/07/2016)~~

~~5.07.080 Insurance requirements.~~

~~The TNC shall comply with the automobile liability insurance requirements contained in Chapter 48.177 RCW as enacted or subsequently amended.~~

~~(Ord. O2016 004, Added, 06/07/2016)~~

~~5.07.090 Registered agent required.~~

~~The TNC shall maintain a registered agent for service of process in the state of Washington. The name, telephone number, and physical address of the registered agent shall be submitted to the city of Tumwater at the time of license application. The TNC shall notify the city of Tumwater in writing of any changes to its registered agent during the term of the license.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.100 Audit.~~

~~A.— No more than twice per license year, the city may audit the TNC's records to review compliance with this chapter. Each audit shall be limited to records relating to no more than twenty randomly selected TNC drivers operating in the city of Tumwater. In the event the audit reveals discrepancies in the records reviewed, the city reserves the right to audit all of the TNC's records related to TNC drivers operating in the city of Tumwater.~~

~~B.— The audit shall occur at Tumwater City Hall, 555 Israel Road SW, Tumwater, Washington; provided, that the city may in its discretion agree to an alternative location.~~

~~C.— Notwithstanding the foregoing, the city may require the TNC to produce records at any time to investigate a specific complaint regarding compliance with this chapter.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.110 Operational requirements.~~

~~A.— While in service in the city, TNC drivers shall only transport passengers who have arranged transportation through a TNC's digital network and shall not solicit or accept street hails by persons seeking transportation.~~

~~B.— While in service in the city, each TNC vehicle shall display removable trade dress or marks which are visible from fifty feet and clearly associate the vehicle with a licensed TNC company.~~

~~C.— The TNC's digital network or website shall display for the passenger the first name and photograph of the TNC driver as well as the make, model, and license plate number of the TNC vehicle.~~

~~D.—The TNC’s digital network or website shall display for the passenger the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC vehicle.~~

~~E.—The TNC shall implement a zero tolerance policy on the use of drugs or alcohol applicable to any TNC driver on its digital network. The TNC shall provide notice of the zero tolerance policy on its website, as well as the procedures to report a complaint about a TNC driver with whom the passenger was matched and for whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the ride. The TNC shall immediately suspend a driver upon receipt of a passenger complaint alleging a violation of the zero tolerance policy. The suspension shall last the duration of the investigation.~~

~~(Ord. O2016 004, Added, 06/07/2016)~~

~~5.07.120 Nondiscrimination—Accessibility.~~

~~A.—The TNC shall adopt a policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to riders and potential riders and notify TNC drivers of such policy.~~

~~B.—TNC drivers shall comply with all applicable laws regarding nondiscrimination against riders or potential riders on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity.~~

~~C.—TNC drivers shall comply with all applicable laws relating to accommodation of service animals.~~

~~D.—A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.~~

~~(Ord. O2016 004, Added, 06/07/2016)~~

~~5.07.130 Revocation, suspension, or denial of TNC license.~~

~~A.—A TNC license may be revoked, suspended, or denied by the director for any of the following reasons:~~

- ~~1.—Failure to meet or maintain any of the requirements or qualifications set forth in this chapter for obtaining a TNC license.~~

~~2.—A materially false statement contained in the application for the license.~~

~~3.—Any violation of this chapter.~~

~~B.—Prior to any revocation, suspension or denial of any TNC license, the city shall inform the TNC of their right to a hearing thereon. Such hearing, if requested, shall be conducted before the city prior to the implementation of any revocation, suspension or denial.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.140 Enforcement.~~

~~The director shall have the administrative authority to implement and enforce this chapter. The director may adopt rules and regulations for its administration not inconsistent with this chapter. This provision shall not be construed to abrogate or limit the jurisdiction of the Tumwater police department to enforce any provisions of this chapter or of any other city ordinance relating to motor vehicles or the operation of taxicabs or TNC vehicles.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.150 Delegation and reciprocity.~~

~~A.—The city of Tumwater may delegate the administration and enforcement of TNC licenses to a partner jurisdiction by interlocal agreement.~~

~~B.—The city of Tumwater honors valid TNC licenses issued by partner jurisdictions pursuant to an interlocal agreement as long as their ordinances regarding TNC licenses remain substantially the same as Tumwater's. A person holding a valid TNC license from a partner jurisdiction is authorized to conduct the licensed business within the city of Tumwater in exactly the same manner and subject to the same rules and regulations as a person holding a license from the city of Tumwater.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

~~5.07.160 Penalty.~~

~~A.—In addition to all other provisions and standards of this chapter, the acts or omissions set forth in this section are prohibited. Any TNC or TNC driver who shall fail to comply with any provision or standard of this chapter shall be in violation of this chapter. A TNC may be held responsible for violations by TNC drivers if the TNC is provided notice of the violation and fails to cure it within a reasonable~~

~~period. Any special license granted to a TNC may be suspended or revoked by the director or designate for such violation.~~

~~B. Submitting a Materially False Affidavit or Attestation. Any TNC submitting a materially false affidavit as provided for under TMC 5.07.040 shall be deemed to have committed a misdemeanor and, if found guilty, shall be subject to a fine not to exceed \$1,000, and/or to imprisonment not to exceed ninety days or to both such fine and imprisonment. Each day shall be a separate offense. In the event of a continuing violation or failure to comply, the second and subsequent days shall constitute a gross misdemeanor punishable by a fine not to exceed \$5,000 and/or imprisonment not to exceed three hundred sixty four days or both such fine and imprisonment. "Continuing violation" shall mean the same type of violation which is committed within a year of the initial violation.~~

~~C. Operating without a TNC License. Any TNC affiliating with a driver who is picking up a passenger in the city of Tumwater without having first obtained a TNC license shall be subject to a civil infraction as provided in TMC Chapter 1.10 and the penalties in TMC 1.10.120.~~

~~D. While in service, any TNC driver picking up a passenger in the city of Tumwater without having a current contract with a special licensed TNC shall be subject to a civil infraction as provided in TMC Chapter 1.10 and the penalties in TMC 1.10.120.~~

~~E. Any independent contractor TNC driver who picks up a passenger in the city of Tumwater and who has not obtained a business license under TMC 5.04.020 shall be subject to penalties as stated in TMC 5.04.080.~~

~~(Ord. O2016-004, Added, 06/07/2016)~~

Section 2. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 4. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 5. Effective Date. This ordinance shall become effective thirty (30) days after passage, approval and publication as provided by law.

ADOPTED this _____ day of _____, 2023.

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

Published:_____

Effective Date:_____